

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION

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California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA  
SAN FRANCISCO**

In the Matter of the Certificate of Authority  
of:

HEALTH NET LIFE INSURANCE  
COMPANY,

Respondent.

CDI File No. OSC-2008-00005

**ORDER TO SHOW CAUSE**

(Insurance Code §§790.03, 790.05, and 790.06  
and California Code of Regulations, Title 10  
Chapter 5, §§2695.1 et seq.);

**ACCUSATION**

(Insurance Code §§700(c), 704, 790.02, 790.03,  
790.05, 790.06, 796.02, 796.04, 10113,  
10123.13, 10123.131, 10380, 10381.5, 10384,  
and 10400 and California Code of Regulations,  
Title 10, Chapter 5, §§2695.1 et seq.);

**NOTICE OF NONCOMPLIANCE**

(Insurance Code §§700(c) 704, 790.02, 790.03,  
790.05, 790.06, 796.02, 796.04, 10113,  
10123.13, 10123.131, 10380, 10381.5, 10384,  
and 10400 and California Code of Regulations,  
Title 10, Chapter 5, §§2695.1 et seq.); and,

**DEMAND**

(Insurance Code §§700(c), 704, 790.035,  
790.08, 10400, and 12976).

1 The Insurance Commissioner of the State of California ("Insurance Commissioner") in his  
2 official capacity alleges that:

3 **JURISDICTION AND PARTIES**

4 1. Respondent, HEALTH NET LIFE INSURANCE COMPANY ("HEALTH NET"),  
5 holds a Certificate of Authority to transact the business of life and disability insurance in the State  
6 of California, pursuant to §700 et seq. of the California Insurance Code<sup>1</sup>; and,  
7

8 2. Respondent, HEALTH NET, domiciled in California, is a subsidiary of Health Net  
9 of California, Inc., which is a wholly owned subsidiary of parent company Health Net, Inc., a  
10 Delaware corporation; and,

11 3. California Insurance Code §700(c) provides that, after the issuance of a certificate  
12 of authority, the holder must continue to comply with all requirements set forth in the Insurance  
13 Code and all other applicable laws of this State.  
14

15 4. California Insurance Code §§704(b) and 10400 provide that, under certain  
16 circumstances, the Commissioner may suspend an insurer's certificate of authority, after hearing.

17 5. California Insurance Code §§730, 733, 734, and 790.04 authorize the  
18 Commissioner access to all records of an insurer and the power to examine the affairs of every  
19 person engaged in the business of insurance to determine if such person violated certain  
20 provisions of the Insurance Code.  
21

22 6. On or about January 2005, the California Department of Insurance's  
23 ("Department") Field Claims Bureau commenced a Market Conduct examination of HEALTH  
24 NET'S claims practices and procedures in California, pursuant to California Insurance Code  
25 §§730, 733 and 735.5, to determine whether denied claims and claims handling practices, from on  
26 or about December 1, 2003 through November 30, 2004, conformed to contractual obligations

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<sup>1</sup> Unless otherwise stated, all references are to the California Insurance Code.

1 and applicable law. The investigation included an examination of claims files and related records  
2 involving Group and Individual Preferred Provider Organization product lines and Group and  
3 Individual life insurance product lines; and an examination of HEALTH NET'S guidelines,  
4 policies and procedures, training plans and forms adopted by HEALTH NET for use in  
5 California; and,

7 7. The Department's public report of the Market Conduct Examination As of  
8 November 30, 2004, stated the manner and extent to which HEALTH NET'S noncompliance  
9 with Insurance Code §790.03, other provisions of the Insurance Code, and Title 10, Chapter 5,  
10 California Code of Regulations, §§2695.1 et seq. is alleged, and specified a reasonable time  
11 thereafter in which such noncompliance may be corrected; and,

13 8. The California Department of Insurance's Claims Services Bureau has also  
14 undertaken an investigation of consumer complaints, pursuant to California Insurance Code  
15 §§735.5 and 12919, received by the Department from 2005 through 2007 regarding HEALTH  
16 NET'S claims handling and rescission practices; and,

17 9. As part of an investigation regarding rescission of policies, on April 8, 2008, the  
18 California Department of Insurance commenced a targeted Market Conduct examination,  
19 pursuant to California Insurance Code §735.5, of HEALTH NET'S Individual and Family Plan  
20 health insurance products written in California during the period of 2004 through February 2008,  
21 focusing on rescission practices, to determine whether such practices and related claims  
22 settlement practices comply with contractual obligations and applicable law; and,

24 10. California Insurance Code §790.02 prohibits any insurer from engaging in this  
25 State "in any trade practice which is ... an unfair method of competition or an unfair or deceptive  
26 act or practice in the business of insurance;" and,

11. California Insurance Code §790.03 defines unfair methods of competition and

1 unfair and deceptive acts or practices in the business of insurance. Section 790.03(h) enumerates  
2 sixteen (16) claims settlement practices that, when either knowingly committed on a single  
3 occasion, or performed with such frequency as to indicate a general business practice, are  
4 considered to be unfair claims settlement practices, and are thus prohibited; and,

5  
6 12. California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Article 1  
7 contains Fair Claims Settlement Regulations that delineate certain minimum standards for the  
8 settlement of claims to "promote the good faith, prompt, efficient and equitable settlement of  
9 claims." All licensees are required to have thorough knowledge of such regulations; and,

10 13. California Insurance Code §790.035 provides that any person who engages in any  
11 unfair method of competition or any unfair or deceptive act or practice defined in §790.03 is  
12 liable to the state for a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or,  
13 if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for  
14 each act. The commissioner shall have the discretion to establish what constitutes an act; and,

15  
16 14. California Insurance Code §790.06 provides for the prosecution of unfair methods  
17 of competition and unfair and deceptive acts or practices in the business of insurance that are not  
18 defined in §790.03; and,

19  
20 15. California Insurance Code §796.02 prohibits a disability insurer from  
21 compensating a person reviewing claims for health care services either on the basis of a  
22 percentage of the amount by which a claim is reduced or the number of claims or the cost of  
23 services for which the person has denied authorization or payment; and,

24 16. California Insurance Code §796.04 provides that a health insurer "that authorizes a  
25 specific type of treatment for services covered under a policyholder's contract by a provider shall  
26 not rescind or modify this authorization after the provider renders the health care service in good  
faith and pursuant to the authorization for any reason, including, but not limited to, the insurer's

1 subsequent rescission, cancellation, or modification of the insured's or policyholder's  
2 contract....," and,

3 17. California Insurance Code §10113 provides that "Every policy of life, disability, or  
4 life and disability insurance issued or delivered within this State... shall contain and be deemed to  
5 constitute the entire contract between the parties and nothing shall be incorporated therein by  
6 reference to any constitution, by-laws, rules, application or other writings, of either of the parties  
7 thereto or of any other person, unless the same are indorsed upon or attached to the policy....,"  
8 and,  
9

10 18. California Insurance Code §10123.13 requires that "Every insurer issuing group or  
11 individual policies of health insurance that covers hospital, medical, or surgical expenses...shall  
12 reimburse claims..., whether in state or out of state, as soon as practical, but no later than 30  
13 working days after receipt of the claim by the insurer." If the claim is contested or denied by the  
14 insurer, the claimant shall be notified in writing within 30 working days after receipt of the claim.  
15 Such notice must identify the portion of the claim that is contested or denied and the specific  
16 reasons including the factual and legal basis for contesting or denying the claim. The insurer  
17 shall provide a copy of such notice to the insured's health care provider that provided the services  
18 at issue. If an uncontested claim is not reimbursed within 30 working days after receipt, or if the  
19 insurer has received all of the information necessary to determine payer liability for a contested  
20 claim that is determined to be payable and has not reimbursed the claim within 30 working days  
21 of receipt of that information, interest shall accrue and shall be payable at the rate of 10 percent  
22 per annum beginning with the first calendar day after the 30 working day period.  
23  
24

25 19. California Insurance Code §10123.131 provides, in pertinent part, that an insurer  
26 shall not request information that is not reasonably necessary to determine liability for payment of  
a claim.

1           20.     California Insurance Code §10380 provides that the falsity of any statement in the  
2 application for insurance shall not bar the right to recovery under the policy unless such false  
3 statement was made with actual intent to deceive or unless it materially affected either the  
4 acceptance of the risk or the hazard assumed by the insured. As established by the California  
5 Supreme Court, an incorrect or incomplete statement cannot serve as the basis for rescission if the  
6 applicant had no present knowledge of the facts sought or failed to appreciate the significance of  
7 information related to him. The burden of proving misrepresentation is on the insurer.  
8

9           21.     California Insurance Code §10381.5 provides, in pertinent part, that "the insured  
10 shall not be bound by any statement made in an application for a policy unless a copy of such  
11 application is attached to or endorsed on the policy when issued as a part thereof."  
12

13           22.     California Insurance Code §10384 prohibits an insurer issuing any policy of  
14 disability insurance covering hospital, medical, or surgical expenses from "rescinding, canceling,  
15 or limiting of a policy or certificate due to the insurer's failure to complete medical underwriting  
16 and resolve all reasonable questions arising from written information submitted on or with an  
17 application *before* issuing the policy or certificate."  
18

### 19                                   FACTUAL ALLEGATIONS

20           23.     On or about January 2005, the Department's Field Claims Bureau conducted an  
21 examination of HEALTH NET'S claims denial and claims handling practices between the period  
22 of December 1, 2003 to November 30, 2004. The examination focused primarily on whether  
23 HEALTH NET'S claims handling and claims settlement practices and procedures involving  
24 Group and Individual and Family Plan Preferred Provider Organization product lines and Group  
25 and Individual life insurance product lines were effectuated promptly, fairly, and equitably, in  
26 conformance with contractual obligations and California law. The examination included a limited

1 examination of claims files and related records and a limited review of the guidelines, procedures,  
2 training plans and forms adopted by Respondent for use in California; and,

3       24. As a result of the examination of the period from December 1, 2003 to November  
4 30, 2004, the Department alleged violations of California Insurance Code §790.03(h) and/or the  
5 Fair Claims Settlement Regulations, and other provisions of the Insurance Code; and,

6       25. The Commissioner alleges that each alleged violation of California Insurance  
7 Code §790.03(h) and/or the Fair Claims Settlement Regulations, and other provisions of the  
8 Insurance Code identified in the examination referred to in paragraph 24 constitutes an unfair  
9 method of competition or unfair or deceptive act or practice within the meaning of California  
10 Insurance Code §790.03; and

11       26. The Department's Claims Services Bureau has investigated consumer complaints,  
12 received by the Department from 2005 through 2007, regarding HEALTH NET'S claims  
13 handling and rescission practices. Based on its investigation, the Department has identified a  
14 significant number of alleged violations of California Insurance Code §790.03 and/or the Fair  
15 Claims Settlement Regulations, and various other provisions of the Insurance Code; and,

16       27. The Commissioner alleges that each alleged violation cited in the Department's  
17 investigation of consumer complaints constitutes an unfair method of competition or unfair or  
18 deceptive act or practice within the meaning of California Insurance Code §790.03; and,

19       28. In April 2008, the Department's Field Claims Bureau commenced a targeted  
20 examination of HEALTH NET'S rescission practices and related claims settlement practices  
21 during the period from 2004 through February 2008 involving Individual and Family Plan  
22 Preferred Provider Organization health insurance products written in California. During that  
23 period of time, HEALTH NET rescinded numerous policies. The examination included a review  
24 of a sample of policy files and related supporting records as well as an examination of personnel  
25  
26

1 records, guidelines, policies and procedures, training manuals and forms adopted by HEALTH  
2 NET for use in California; and,

3         29. As a result of such examination, the Department has identified incidences of  
4 alleged failures to complete medical underwriting and resolve all reasonable questions arising  
5 from written information submitted on or with an application before issuing the policy, failure to  
6 attach or endorse upon the policy an application on which the rescission was based, failure to  
7 adopt and implement reasonable standards for the prompt investigation and processing of claims,  
8 and failure to promptly, fairly and equitably settle claims.

9  
10         30. The total number of alleged unfair claims practices and violations of other  
11 provisions of the Insurance Code related to the rescissions, and the amount of any civil penalty  
12 will be determined at the hearing.

### 13                                 STATUTORY ALLEGATIONS

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15         31. Based upon the facts set forth herein, the Insurance Commissioner alleges that  
16 HEALTH NET has engaged in activities which constitute an unfair method of competition and/or  
17 unfair or deceptive acts or practices in this State, in violation of California Insurance Code  
18 §790.03 and/or the Fair Claims Settlement Practices Regulations, and if proven would constitute  
19 grounds for the Insurance Commissioner to suspend or revoke HEALTH NET'S Certificate of  
20 Authority pursuant to California Insurance Code §790.08; and,

21  
22         32. Based upon the facts set forth herein, the Insurance Commissioner alleges that  
23 HEALTH NET has engaged in activities which constitute an unfair method of competition and/or  
24 unfair or deceptive acts or practices in this State, in violation of California Insurance Code  
25 §790.03 and the Fair Claims Settlement Practices Regulations, and if proven would constitute  
26 grounds for the Insurance Commissioner to assess a monetary penalty not to exceed five thousand  
dollars (\$5,000) for each act, or, if the act or practice was willful, a monetary penalty not to



1 exceed ten thousand dollars (\$10,000) for each act pursuant to California Insurance Code  
2 §790.035; and,

3 33. Based upon the facts set forth herein, the Insurance Commissioner alleges that  
4 HEALTH NET has violated California Insurance Code §704(b) and if proven would constitute a  
5 basis for the Insurance Commissioner to suspend, after hearing, HEALTH NET'S Certificate of  
6 Authority pursuant to Insurance Code §704(b); and,

7  
8 34. Based upon the facts set forth herein, the Insurance Commissioner alleges that  
9 HEALTH NET has violated California Insurance Code §10384, and, if willful, would constitute  
10 grounds for the Insurance Commissioner to suspend or revoke HEALTH NET'S Certificate of  
11 Authority pursuant to California Insurance Code §10400; and,

12  
13 35. Based upon the facts set forth herein, the Insurance Commissioner alleges that  
14 HEALTH NET has engaged in activities related to rescission of policies in violation of §790.06  
15 of the Insurance Code, and if proven would constitute grounds for the Insurance Commissioner to  
16 suspend or revoke the Certificate of Authority pursuant to Insurance Code §790.08; and,

17 36. The Insurance Commissioner hereby notifies HEALTH NET that, based upon the  
18 facts alleged herein, the Insurance Commissioner alleges that HEALTH NET is in violation of  
19 California Insurance Code §§700(c), 704, 790.02, 790.03, 790.06, 796.02, 796.04, 10113,  
20 10123.13, 10123.131, 10380, 10381.5, and 10384, and the Fair Claims Settlement Regulations  
21 contained in Title 10, Chapter 5, Subchapter 7.5, California Code of Regulations, commencing  
22 with §2695.1.  
23

24 **DEMAND PURSUANT TO**  
25 **CALIFORNIA INSURANCE CODE §§704, 790.035, 790.05, 790.06, 790.08, and 10400**

26 37. As a result of HEALTH NET'S alleged actions, as set forth hereinabove, and  
pursuant to California Insurance Code §§704, 790.05, 790.06, 790.08, 10400, and 12976, demand  
is hereby made to HEALTH NET to cease and desist from engaging in any activities in violation

1 of California Insurance Code §§700(c), 704(b), 790.02, 790.03, 790.06, 796.02, 796.04, 10113,  
2 10123.13, 10123.131, 10380, 10381.5, and 10384 and the Fair Claims Settlement Regulations  
3 contained in Title 10, Chapter 5, Subchapter 7.5, California Code of Regulations, commencing  
4 with §2695.1 et seq.; and,

5  
6 38. As a result of HEALTH NET'S alleged actions, as set forth hereinabove, and  
7 pursuant to California Insurance Code §§790.06, 790.08 and 12976, demand is hereby made to  
8 HEALTH NET to take such actions to ensure compliance in the manner to be specified by the  
9 Commissioner; and,

10 39. Demand is hereby made to HEALTH NET, pursuant to California Insurance Code  
11 §790.035, for the imposition of monetary penalties as provided by law and for such other  
12 equitable relief, including restitution, as may be necessary to redress HEALTH NET'S violations  
13 of enumerated California statutory law and regulations; and;

14  
15 40. Demand is hereby made to HEALTH NET for such other and further relief as may  
16 be just and proper.

17 **ORDER TO SHOW CAUSE PURSUANT TO CALIFORNIA INSURANCE CODE**  
18 **§§790.03, 790.05 and 790.06**

19 41. WHEREAS, the Insurance Commissioner has reason to believe, based upon the  
20 facts set forth herein, that HEALTH NET has violated California Insurance Code §790.03(h);  
21 and,

22 42. WHEREAS, the Insurance Commissioner has reason to believe, based upon the  
23 facts set forth herein, that HEALTH NET has violated California Insurance Code §790.06; and,

24  
25 43. WHEREAS, the Insurance Commissioner has reason to believe that a proceeding  
26 by the Insurance Commissioner would be in the public interest, he hereby issues the herein Order  
to Show Cause, pursuant to California Insurance Code §790.05, containing a statement of the  
charges and HEALTH NET'S potential liability; and,

1           44.     THEREFORE, the Insurance Commissioner hereby notifies HEALTH NET that a  
2 hearing shall be held at a time and place to be determined by the Commissioner which shall not  
3 be less than 30 days after service of the herein Order to Show Cause to determine whether the  
4 alleged methods, acts or practices set forth herein should be declared to be unfair or deceptive and  
5 whether the Commissioner should issue an Order to pay the penalty imposed by California  
6 Insurance Code §790.035 and to cease and desist from such acts or practices.  
7

8           WHEREFORE, the Insurance Commissioner prays for the following:  
9

10           1.     An Order to Cease and Desist against HEALTH NET from engaging in acts or  
11 practices in the business of life and disability insurance in violation of California Insurance Code  
12 §§790.03 and 790.06; and,

13           2.     An Order to Cease and Desist against HEALTH NET from engaging in activities  
14 in the business of life and disability insurance in violation of California Insurance Code §§700(c),  
15 704(b), 796.02, 796.04, 10113, 10123.13, 10123.131, 10380, 10381.5, and 10384; and  
16

17           3.     The suspension, restriction, or revocation of HEALTH NET'S Certificate of  
18 Authority to act as a Life and Disability insurer in the State of California, pursuant to California  
19 Insurance Code §§700(c), 704(b), and 10400; and,

20           4.     The imposition of monetary penalties as provided by law, pursuant to California  
21 Insurance Code §790.035, and for such other equitable relief, including restitution, as may be  
22 necessary to redress HEALTH NET'S violations as set forth above; and,  
23

24           5.     The imposition of such other and further relief as may be just and proper.  
25     //  
26     //  
   //

1 Dated: August 14, 2008

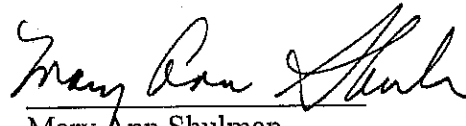
STEVE POIZNER  
Insurance Commissioner

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By:



Mary Ann Shulman  
Senior Staff Counsel

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**PROOF OF SERVICE**  
**Health Net Life Insurance Company**  
**Case No. OSC-2008-00005**

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On August 14, 2008, I served the following document(s):

**ORDER TO SHOW CAUSE; ACCUSATION; NOTICE OF  
NONCOMPLIANCE; DEMAND**

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

If **EMAIL**, by electronic mail transmission this date to the email address(es) listed.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
Jean Hipon

**SERVICE LIST**  
**Health Net Life Insurance Company**  
**Case No. OSC-2008-00005**

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
Douglas A. Schur Vice President & Chief Regulatory Counsel <b>Health Net, Inc.</b> 21650 Oxnard Street, Suite 1560 Mail Stop Code: 102-15-03 Woodland Hills, CA 91367 <a href="mailto:douglas.a.schur@healthnet.com">douglas.a.schur@healthnet.com</a>	Tel.: (818) 676-8394 Fax: (818) 676-8097	EMAIL & U. S. Mail
Kenneth B. Schnoll <b>Sonnenschein Nath &amp; Rosenthal</b> <b>LLP</b> 525 Market Street, 26 <sup>th</sup> Floor San Francisco, CA 94105-2708 <a href="mailto:kschnoll@sonnenschein.com">kschnoll@sonnenschein.com</a>	Tel.: (415) 882-1020 Fax: (415) 882-0300	EMAIL & U. S. Mail